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JUN 12 2023

OFFICE OF
WATER

June 9, 2023

VIA U.S. REGULAR AND CERTIFIED MAIL

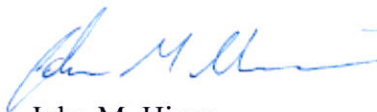
Water Rights Program
Attn: Chief Engineer
Foss Building
523 E Capitol
Pierre, SD 57501

Re: McCook Lake Recreation Area Association Request for Automatic Delay of Hearing on Application No. 8744-3 to Appropriate Water.

To the Chief Engineer:

This Firm Represents the McCook Lake Recreation Area Association ("MLA"). The MLA has filed an Opposition to Application No. 8744-3, and pursuant to South Dakota Codified Laws section 46-2A-5, the MLA requests an automatic postponement of the date set for hearing on the Application.

Sincerely,



John M. Hines
For the Firm



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JUN 12 2023

OFFICE OF
WATER

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 8744-3

Name of Applicant Dakota Bay, LLC c/o Michael Chicoine

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you.

Dakota Bay's "canal" project, and associated pumping described in the application will have a detrimental effect on the Petitioner, McCook Lake Recreation Area Association ("MLA"), in one or more of the following ways

- 1) The proposed diversion will unlawfully impair the MLA's existing water rights, permit 6479-3;
- 2) The proposed diversion will undermine the MLA's efforts in sustaining the water levels of McCook Lake, at MLA's considerable expense; and
- 3) The MLA has filed a Petition for Declaratory Ruling pertaining to other matters associated with the Dakota Bay project, and a ruling on that petition must first be reached before this application can be considered.

List the reasons for your opposition to this application.

The McCook Lake Recreation Area Association ("MLA") is a South Dakota non-profit corporation funded primarily by voluntary donations. The MLA and its volunteers maintain and preserve McCook Lake, which is a public body of water belonging to the people of the State of South Dakota. In connection with the MLA's efforts, the MLA holds a water rights permit number 6479-3 (and prior permits) to pump water from the Missouri River into McCook Lake. Due to channelization, McCook Lake sits above the Missouri River in elevation. The MLA maintains a 7,550 foot long pipe, connected to pumps, which fills the lake to a target level of 1088 to 1089 feet elevation. Pumping costs vary by month and weather conditions, but has previously cost approximately \$5,000.00 per month during dry conditions.

The Report to the Chief Engineer on Water Permit Application No. 8744-3 (the "Report") and the accompanying Recommendation of Chief Engineer for Water Permit Application No. 8744-3, ("Recommendation") fail to mention, let alone consider, the MLA's permit and whether the diversion described would impair the MLA's existing water rights. The Report and Recommendation also fail to consider whether the diversion described would negatively affect the water levels in McCook Lake, which are already sustained by the extraordinary efforts of the MLA, tens of thousands of dollars in annual expense, volunteers, and the system of pumping. MLA's existing water right would be adversely affected, because (i) the canal may cause the lake to drain, rendering it useless to the public; or (ii) MLA would need to provide additional water to support the canal, and it may be impossible to do so.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel.

First Name: John Last Name: Hines (Crary Huff Law Firm, Attorney for MLA)

Mailing Address: 329 Pierce Street, PO Box 27, Suite 200

City: Sioux City State: Iowa Zip: 51102

Optional contact information. Phone: (712) 224-7550 Email: jhines@craryhuff.com

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 8744-3

Petitioner's Name McCook Lake Recreation Area Association

Any additional description of the unique injury or reasons for opposing this application:

While the Application refers to "engineer's calculations" of the amount of water needed for the canal, no such "calculations" are shown-Only conclusory numbers are shown. None of the Application, Report, or Recommendation describe the canal, its dimensions, or proposed elevation. It is unclear how, without detailed plans of the canal, the SD DANR can meaningfully determine whether water rights will be impaired by "filling" the canal from the aquifer and whether water is available for appropriation. The MLA also disputes the evaporation, seepage, and runoff figures relied on in the Report overestimate the availability of water for appropriation. Further, MLA has not been provided any soil report for the canal area, and does not know how and whether any such report was considered by the Report and Recommendation. The "Well Completion Report" for Chicoine's existing well is 18 years old.

Additionally, the Report and Recommendation are inconsistent with the Application submitted - Application 8744-3 requests to "fill a canal once per year", whereas the Report and Recommendation only address a "one time" appropriation not to exceed 28.6 acre-feet for the first year. The SD DANR - Water Rights Program engineers should be required to re-evaluate the Application and issue a report on the Application as it was submitted.

The MLA, a non-profit corporation which lacks taxing authority, should not be responsible to sustain Dakota Bay's private development for its sole pecuniary gain. The diversion described in the Application will not be sufficient to maintain water levels in the canal, which will lead to deterioration of the lining, the shoreline, and the canal itself, unless the MLA provides sufficient water from the Missouri River. Furthermore, historical elevation levels of McCook Lake show that water levels in the Lake fall to 1082 feet during winter, which based on canal plans submitted by Chicoine to the South Dakota Department of Game, Fish, and Parks, will expose the proposed canal to winter frost, drying out, and cracking. By year 2, Dakota Bay will be pumping water into a sieve.

Application No. 8744-3 should be denied unless and until Dakota Bay can demonstrate its proposed project (i) will not unlawfully inhibit the MLA's water rights; and (ii) will not result in the draining of McCook Lake - which would have catastrophic ecological and economical consequences for both the MLA and the people of South Dakota.

The MLA is submitting contemporaneously herewith a request for automatic extension pursuant to SDCL 46-2A-5.